IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.Rev.Pet.No. 1826 of 2006(M)

CRRP.10/05 OF ADDL.SESSIONS JUDGE, THRISSUR

REVN. PETITIONER: PETITIONERS/RESPONDENTS 1 AND 2

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1. SUBRAN, AGED 65, S/O. VELAYUDHAN,
   KAITHAYIL HOUSE, KALLETTUMKARA VILLAGE,
   DESOM, MUKUNDAPURAM TALUK.

2. GOKULAN, S/O. KAITHAYIL SUBRAN
   OF DO. DO.

BY ADV. SRI.V.BHASKARA MENON

RESPONDENTS: REVN.PETITIONER AND ADDL. RESPONDENTS 3 AND 4

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1. IRINJALAKUDA DIOCEES EDUCATION TRUST,
   REP. BY MAR JAMES PADAYATTIL, BISHOP OF
   IRINJALAKUDA, BISHOPS HOUSE, IRINJALAKUDA.

2. KERALA STATE REP. BY
   DISTRICT COLLECTOR, THRISSUR.

3. KODAKARA GRAMA PANCHAYATH, REP. BY
   SECRETARY, KODAKARA GRAMA PANCHAYATH,
   KODAKARA.

4. STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.DILEEP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1826 OF 2006 C

Dated this the 16th day of November, 2007

O R D E R

The revision petitioners, who are father and son, claim to be the owners in respect of 1.60 acres of land in Kallettumkara village. The said land is stated to be a paddy field. The 1st respondent, namely Irinjalakuda Diocese Education Trust represented by the Bishop of Irinjalakuda, is alleged to have purchased 40 acres of land in Kallettumkara and Kodakara villages for the purpose of starting an engineering college. The grievance of the revision petitioners is that the 1st respondent had filled up paddy fields and converted the same to building sites without getting permission from the competent authority under the Kerala Land Utilisation Order and as a result of such filling and conversion, a natural water course flowing through the paddy filed was encroached upon and blocked affecting the paddy cultivation of the petitioners and others. Accordingly, the 1st revision petitioner moved the Revenue Divisional Officer, Thrissur. The revision petitioners claim to have moved the RDO under section 133 Cr.P.C. alleging the obstruction of a public water course.

While the matter was pending before the RDO, the 1st revision petitioner filed OP.10458/02 before this court for appropriate directions to the RDO for disposal of the petition filed by the 1st revision petitioner. The said O.P. was disposed of by this court on 1.6.04 directing the RDO, Thrissur to look into the grievance raised by the 1st revision petitioner herein in the petition filed by him and to take proper decision in accordance with law, after affording an opportunity of being heard to the 1st revision petitioner, the 1st respondent Irinjalakuda Diacese Education Trust and any other person interested. Thereafter, the RDO passed an order dated 14.12.04 as D1-4430/202 holding that the water course had been unlawfully obliterated rendering paddy cultivation impossible due to non-availability of water for irrigation and that the said water course is to be restored to its original condition and directing the Secretary of the Kodakara Grama Panchayat to take urgent steps to restore the water course to its original condition within one month of the said order and to report the action taken in that behalf to the RDO. Aggrieved by the said decision, the 1st respondent education trust filed a revision before the Sessions Court, Thrissur as Crl.R.P.10/05 against the revision petitioners,

District Collector and the Kodakara Grama Panchayat. The said revision was filed on 19.1.05. Since the revision was filed beyond the period of limitation prescribed for the same an application was filed as Crl.M.P. 119/05 for condoning the delay of 5 days. The said application appears to have been filed by Advocate Sri.K.M.Thomas Raj who is none other than the counsel who was appearing for the 1st respondent/Educational Trust. The proceedings paper produced as Annexure-A5 shows that on 15.2.05 Crl.M.P.119/05 was allowed and the revision was admitted and notice was issued by the Principal Sessions Court, Thrissur. The revision was thereafter made over to the I Additional Sessions Court. It was on 28.3.05 that the revision petitioners herein who were respondents 1 and 2 in the above revision entered appearance through counsel.

2. The learned counsel appearing for the revision petitioners submitted that the Sessions Court was acting illegally in entertaining the revision filed out of time by condoning the delay without issuing notice on the delay petition to the respondents therein. He also contended that the order impugned in the above revision was not a final order passed by the RDO in terms of

Section 138 Cr.P.C. The above grounds have been specifically raised in this revision. The learned counsel appearing for the 1st respondent also was not able to support the order passed on Crl.M.P.119/05 without issuing notice to the respondents therein. When a proceedings filed before a court is beyond the period of limitation fixed by law and condonation of the delay is sought, the principles of natural justice demand that the persons who would be aggrieved by condoning the delay are heard. This is because a valuable right has accrued to the opposite party on account of the lapse of time and such right cannot be interfered with lightly. In a case where limitation has been prescribed for certain category of offences under the Cr.P.C. eventhough the court possesses the right to condone the delay if it is of the view that it is expedient in the interest of justice to do so, the court cannot condone the delay without issuing notice to the persons affected thereby. This is because of the principle of audi alteram partem which is attracted. It means that no person shall be contemned unheard. [See in this connection, ***State of Maharashtra Vs. Sharadchandra Vinayak Dongre and others*** [AIR 1995 SC 231]. The Sessions Judge by condoning the delay and allowing Crl.M.P.119/05 behind the back

of the revision petitioners was committing a manifest error of jurisdiction. The matter has, therefore, to go back to the Sessions Court.

3. The propriety of the counsel appearing for the revision petitioners before the Sessions Court filing a petition to condone the delay may also have to be gone into by that court. Yet another aspect which may have to be considered is the maintainability of the revision before that court. If the order dated 14.12.04 of the RDO was not a final order under section 138 Cr.P.C., then it wold not be revisable under section 397 Cr.P.C. It was without going into all these preliminary aspects that the learned Sessions Judge disposed of the revision and set aside the order passed by the RDO as if the revision itself was competently filed in accordance with law. The only alternative available to this court is, therefore, to set aside the revisional order dated 6.1.06 passed by the I Additional Sessions Court, Thrissur in Crl.R.P.10/05 and direct that court to consider the aforementioned aspects and pass fresh orders in accordance with law. It goes without saying that both sides shall be entitled to address the Sessions Court regarding the maintainability of the revision, regarding the propriety of the delay

petition filed by the counsel for the revision petitioner therein and such other relevant matters which may be raised by the parties. The order dated 6.1.06 passed by the I Additional Sessions Court, Thrissur in Crl.R.P.10/05 is accordingly set aside and the matter is remanded to that court for fresh disposal in accordance with law and in the light of the observations hereinabove contained. The parties shall appear before the I Additional Sessions Court, Thrissur on 10.12.2007 without any further notice. It is needless to say that that court shall give top priority to this case and make every endevour to dispose of the same expeditiously and at any rate, within two months of the date of appearance of the parties.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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